



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

SALIWANCHIK LLOYD &
SALIWANCHIK
A PROFESSIONAL ASSOCIATION
PO BOX 142950
GAINESVILLE, FL 32614-2950

COPY MAILED

NOV 02 2006

OFFICE OF PETITIONS

In re Patent No. 6,936,281 :
Issued: August 30, 2005 :
Applicant: Seshi : DECISION ON REQUEST
Application No. 09/914,508 : FOR RECONSIDERATION OF
Filed: November 7, 2001 : PATENT TERM ADJUSTMENT
Atty Docket No. 0152.00418 :

This letter is in response to the "COMMUNICATION," filed August 26, 2005. Pursuant to patentee's duty of good faith and candor to the Office, patentee requests confirmation of the issuance of a patent term adjustment of 96 days. The delay in treating this request is regretted.

The request for review of the determination of patent term adjustment (PTA) is granted.

The patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of **zero (0)** days.

On August 26, 2005, patentee submitted the instant comment. On August 30, 2005, the above-identified application matured into U.S. Patent No. 6,936,281, with a revised patent term adjustment of 96 days. Patentee states no basis for the request for review of the patent term adjustment.

Nonetheless, a review of the application history confirms that an incorrect number of days were determined for both USPTO and Applicant delay. Regarding the number of days for PTO delay;

the entry of a period of adjustment of 67 days (under 37 CFR 1.702(a)(1), was entered in error. Specifically, a period of adjustment of 67 days was entered for Office delay in issuing a first Office action more than 14 months after the actual filing date of the application. The PTA calculation was erroneously based upon a filing date of August 28, 2001; however, the calculation is properly based on the date the application fulfilled the requirements of 35 U.S.C. 371, November 7, 2001. As such, the mailing of the Restriction Requirement on January 3, 2003 was within 14 months. There was no Office delay. The adjustment for PTO delay of 67 days under 37 CFR 1.702(a) is therefore not warranted.

Further to this, the entry of a period of adjustment of 66 days (under 37 CFR 1.702(a)(4)), is correct. Specifically, a period of adjustment of 66 days was entered for Office delay in issuing the patent more than four (4) months after the issue fee was paid.

Regarding the number of days for Applicant delay, the Office correctly calculated a period of adjustment of three (3) days and 34 days under 37 CFR 1.704(b) for taking in excess of three (3) months to respond to the non-final Office action mailed April 21, 2003, and the non-final Office action mailed June 17, 2004 respectively; however, the Office failed to calculate the period of reduction of 67 days under 1.704(b) for filing the Request for Continued Examination ("RCE") on March 12, 2004 in response to the final Office action mailed October 10, 2003 and under 1.704(c)(8) for the supplemental paper on March 19, 2004. The Office also failed to calculate the periods of reduction of 36, 14, and 35 days under 1.704(c)(8) for filing (1) the Information Disclosure Statement (IDS) on September 2, 2003 after filing the response after non-final on July 28, 2003; (2) filing a supplemental IDS on April 2, 2004, after filing a supplemental paper on March 19, 2004, and (3) filing a supplemental IDS on May 7, 2004. None of these papers was expressly requested by the Examiner. Nor did either of the IDSs contain a statement under 37 CFR 1.704(d).

In view thereof, the patent should have issued with a revised Patent Term Adjustment of zero (0) days (66 days of Office delay reduced by 189 (3 + 36 + 67 + 14 + 35 + 34) days of Applicant delay).

Patentees are reminded that 37 C.F.R. 1.702(b) provides that:

The period of adjustment under § 1.702(b) is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the sum of the following periods:

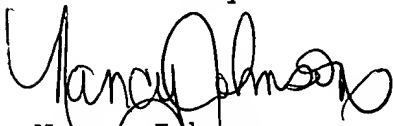
- (1) The number of days, if any, in the period beginning on the date on which a request for continued examination of the application under 35 U.S.C. 132(b) was filed and ending on the date the patent was issued;

It is noted that an RCE was filed in this application on March 12, 2004. This was within three years of the filing date of the application. Thus, the RCE cut off accumulation of periods of adjustment pursuant to 1.702(b). As such, no period of adjustment accrued for the Office taking in excess of three years to issue the patent.

As this letter was submitted as an advisement to the Office of an error in Patentee's favor, the Office will not assess the \$200.00 application fee under 37 CFR 1.705(b). The Office thanks patentee for their good faith and candor in bringing this to the attention of the Office.

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify this error. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **zero (0) days**.

Telephone inquiries specific to this matter should be directed to Attorney Derek L. Woods at (571) 272-3232.



Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of REVISED PAIR Screen
Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 6,936,281 B2
DATED : August 30, 2005
INVENTOR(S) : Seshi

DRAFT

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (96) days

Delete the phrase "by 96" and insert – by 0 days--